

D. GEORGE SWEIGERT, C/O
P.O. BOX 152
MESA, AZ 85211

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)

D. GEORGE SWEIGERT
Plaintiff,

vs.

JASON GOODMAN

Case No.: 1:18-cv-08653-UA

NOTICE OF PLAINTIFF'S AMENDED MOTION
PURSUANT TO FRCP RULE 12(F) TO STRIKE
DEFENDANT'S "ANSWER"


**NOTICE OF PLAINTIFF'S AMENDED MOTION PURSUANT TO FRCP RULE 12(F)
TO STRIKE DEFENDANT'S "ANSWER"**

NOW COMES THE PRO SE plaintiff, a layman non-attorney who is acting in the capacity of a private attorney general in a public interest lawsuit, to respectfully NOTICE the Clerk of the Court and interested parties of the accompanying MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S AMENDED MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PER FRCP RULE 12(F) pursuant to Local Rule 7.1. MOTION is made upon this Court to STRIKE the Defendant's "ANSWER", appearing as Doc. No. 35, filed 10/22/2018 (herein "ANSWER"). Plaintiff herein invokes F.R.C.P. Rule 12(f) and New York Civil Practice Laws and Rules (CPLR) 3024(a) and (b). Plaintiff's documents appearing as Doc. Nos 41 and 42, 10/19/2018 are hereby AMENDED pursuant to FRCP Rule 15(a).

DECLARATION / ATTESTATION

I hereby attest that the foregoing is accurate and true under the penalties of perjury. Pursuant to **Local Rule 7.1** I hereby attest that the any attached exhibits accompanying this pleading are accurate and true copies of source documents located on the Internet.

Signed this 29 day of October, 2018


Plaintiff, D. George Sweigert
Pro se plaintiff acting as private attorney general

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D. GEORGE SWEIGERT

Plaintiff,

vs.

JASON GOODMAN

Case No.: 1:18-cv-08653-UA

MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION TO STRIKE DEFENDANT'S ANSWER
OR OTHERWISE MAKE MOOT PURSUANT TO
FRCP RULE 12(F)

**MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S AMENDED MOTION
TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE
12(F)**

1. Pursuant to **Local Rule 7.1**, the Federal RICO Plaintiff seeks to STRIKE OR OTHERWISE MAKE MOOT the Defendant's ANSWER (**Doc. No. 35**, 10/10/2018 [herein **ANSWER**]). These POINTS AND AUTHORITIES are herein presented to support Plaintiff's AMENDED MOTION TO STRIKE (filed pursuant to Fed. R. Civ. Proc. (FRCP) Rule 15(a)). Plaintiff herein relies of **FRCP Rule 12(f)** and New York Civil Practice Law and Rules (**CPLR**) § 3022 to seek this relief. The Defendant's ANSWER is defective and should be deemed moot by this Court.

DEFECTIVE ANSWER

2. The Court will observe that the Defendant ANSWER (**Doc. 35**) was **NOT** verified; but, the Plaintiff's operative South Carolina Amended Complaint **WAS** verified (**Doc. No. 5**, filed 06/29/2018 [herein the **South Carolina AC**]). **CPLR § 3022** indicates that a Plaintiff that files a VERIFIED complaint as the right to expect a verified answer. If the answer is not verified it is to be treated as a legal nullity. Quoting **CPLR § 3022**:

CPLR §3022 states:

A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do.

3. The court deciding *Rodriguez v Westchester County Bd. of Elections* expressed the issue in this manner:

Generally, "where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence (emphasis supplied) to the attorney of the adverse party that he elects so to do" (CPLR 3022).

(*Rodriguez v Westchester County Bd. of Elections* 2015 NY Slip Op 25063 Decided on February 27, 2015 Supreme Court, Westchester County Wood, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431)

4. The court deciding *Drake v Toubia Harou Cayor Transp., Inc.* reasoned that:

CPLR §3022, states that a defective verification as tantamount to no verification at all and authorizes a party to reject a pleading which is unverified or verified in a defective manner. CPLR §3022 states

A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do.

Thus, when a pleading, in a case where verification is required, is served without proper verification, the same can be treated as a nullity, provided the party rejecting said pleading, gives his adversary immediate notice. *Master v. Pohanka*, 44 AD3d 1050 (2nd Dept. 2007); *Air New York, Inc. v. Alphonse Hotyel Corp.*, 86 AD2d 932 (3rd Dept. 1982); *Ladore v. Mayor and Board of trustees of the Village of Port Chester*, 70 AD2d 603 (2nd Dept. 1979).

(*Drake v Toubia Harou Cayor Transp., Inc.* 2008 NY Slip Op 50468(U) [19 Misc 3d 1102(A)] Decided on February 21, 2008 Supreme Court, Bronx County Roman, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431)

DEFENDANT'S BIFURCATED ANSWER AND COUNTERCLAIM

5. The Court will observe that the Defendant served a highly unorthodox letter upon the Clerk of the Court (Doc. No. 36, 10/11/2018 [herein **LETTER**]). In Defendant's **LETTER** the following is stated:

Please take notice that I, Defendant Jason Goodman, in the matter of D. George Sweigert v Jason Goodman 1:18-cv-08653-UA **intend to file a counterclaim.** [emphasis added]

6. In New York a counterclaim may accompany an answer pursuant to **CPLR § 3011**. There is no procedure to support bifurcating the two (2). **CPLR § 3011** states:

Kinds of pleadings

There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff and a cross-claim against a defendant. A defendant's pleading against another claimant is an interpleader complaint, or against any other person not already a party is a third-party complaint. There shall be a reply to a counterclaim denominated as such, an answer to an interpleader complaint or third-party complaint, and an answer to a cross-claim that contains a demand for an answer. If no demand is made, the cross-claim shall be deemed denied or avoided. There shall be no other pleading unless the court orders otherwise. [emphasis added]

7. The Plaintiff objects to being forced into a limbo state orbiting the Defendant while awaiting his bifurcated "counter-claim", as announced in the highly unorthodox **LETTER** (Doc. 36) to the Clerk of the Court. The Defendant has not been officially summoned and/or served (a deficiency corrected by the Defendant's appearance (Doc. No. 34, 10/10/2018 [**APPEARANCE**])).

DEFENDANT'S ATTEMPTED SERVICE VIA E-MAIL MESSAGE

8. On 10/11/2018 the Defendant attempted to send an electronic mail message to the Plaintiff that purported has an **ANSWER** and **CERTIFICATE OF SERVICE** attached as PDF documents. However, the Plaintiff has made no prior arrangements with the Defendant to receive pleadings via electronic transmission. Again, this is an unorthodox activity undertaken by the Defendant by his own volition.

9. Interesting (as explained in the verified exhibits attached to this pleading) the file "Certificate of Service" contain indicators of a computer virus (see Exhibit One [**Exh. 1**]). Therefore, the Plaintiff made no attempt to read or act on any of the attached files, save to have them scanned for malicious software code.

10. As indicated in verified **Exh. 1**, the following error message was displayed in the Plaintiff's GMAIL client:

Encrypted attachment warning

– Be careful with this attachment. This message contains 1 encrypted attachment that can't be scanned for malicious content. Avoid downloading it unless you know the sender and are confident that this email is legitimate.

11. The Plaintiff attests that the e-mail attachment "Certificate of Service" could NOT be scanned by several on-line virus detection services (see Exh. 2, 3 and 4). This situation is normally an indicator of a "zero day" virus or other sophisticated embedded malware.

SUMMARY

12. The Defendant has proceeded ahead at his own peril and volition to file a barrage of documents that are riddled with errors which are prejudicial to the Plaintiff. Defendant's papers are fatally defective for several reasons (as stated above) and should be struck to improve the efficiency of the court and the administration of justice.

13. I certify, under the penalties of perjury, that the foregoing is true and accurate. Further, I attest that the attached exhibits to this pleading are accurate and true representations of screen-shots depicting a PDF file received for the Defendant.

29
Dated this day of October ____, 2018

Respectfully submitted.



D. GEORGE WEIGERT

Pro se non-attorney acting as a private attorney general
for this public interest lawsuit

EXHIBITS

DECLARATION / ATTESTATION




I hereby attest that the foregoing is accurate and true under the penalties of perjury. Pursuant to **Local Rule 7.1 I** hereby attest that the any attached exhibits accompanying this pleading are accurate and true copies of source documents located on the Internet.


Signed this 29 day of October, 2018



Plaintiff, D. George Sweigert
Pro se plaintiff acting as private attorney general

Exhibit 1



 Thu, Oct 11, 9:37 AM (4 days ago)

Answer filed  Inbox x

Jason Goodman <jason@21stcentury3d.com>
 to me, David

Also sent to

D. George Sweigert C/O
 P.O. Box 152
 Mesa AZ 85211
 Have a nice day

2 Attachments

 **Encrypted attachment warning** – Be careful with this attachment. This message contains 1 encrypted attachment that can't be scanned for malicious content. Avoid downloading it unless you know the sender and are confident that this email is legitimate.

 Certificate of Servi...
 Answer to Amende...

Exhibit 2

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OPSWAT.
MetaDefender
Cloud

File Information
Vulnerabilities
Multiscanning
Binary Reputation
Scan History
Community Feedback

https://metadefender.opswat.com/results#/file/cDEHNTA...
80%
ANALYZE
SIGN IN

Search

Certificate of Service for Amended Complaint[2].PDF

SHA256
1ED47F36D35FF7D4F9BCA24442857AC98A2E0A495573486AD75E3765DFFC

MULTISCAN SCORE
0/35
View full report

VULNERABILITY SCORE
REPORT VULNERABILITY
No vulnerabilities reported!

CAST YOUR VOTE ON THIS FILE
Clean
Malicious

You must be signed in to vote

Get this data from our API

Small Note JS Python Ruby Go Powershell

Exhibit 3

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Search or scan a URL, IP address, domain, or file hash

https://www.virustotal.com/#/file/1ed47f36d35f7d4f9bcca24442857

F-PROT appended

PDF Info

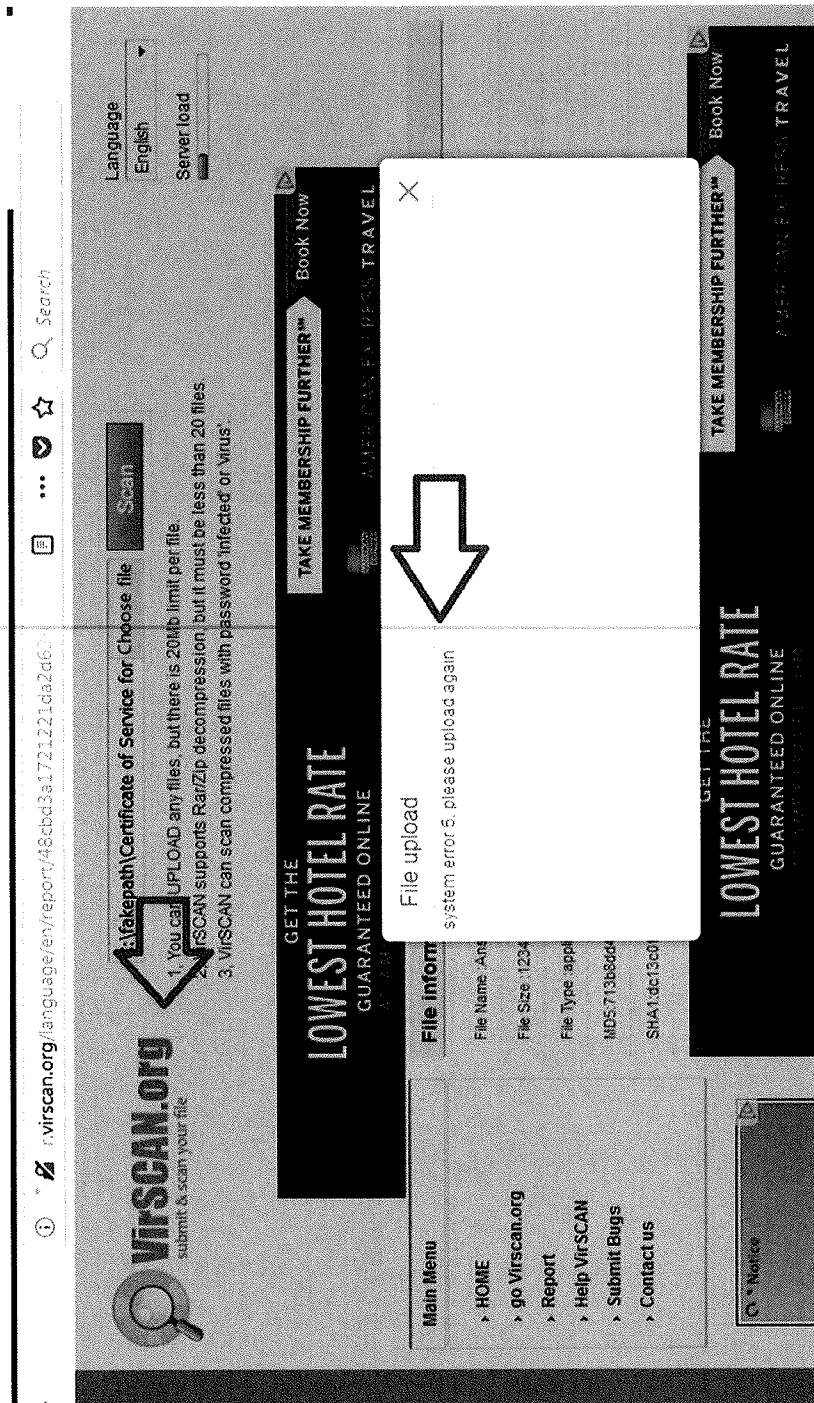
Commonly Abused Properties

- Makes use of AcroForm objects.
- Contains 4 object stream(s).
- Makes use of Digital Rights Management or needs a password to be read.
- Contains 2 page(s).
- Contains 32 object start declaration(s) and 32 object end declaration(s).
- Contains 27 stream object start declaration(s) and 0 stream object end declaration(s).
- Has a pointer to the cross reference table (startxref).

Exif Tool File Metadata

CreateDate	2018:10:11 16:24:15Z
CreatorTool	Word
DocumentID	uuid:a8db954b-4e14-674e-8293-47e9491f5d14
Encryption	Standard V4.4 (128-bit)
FileType	PDF
FileTypeExtension	pdf
Format	application/pdf
HasXFA	No
InstanceID	uuid:dac4fec7-41a1-864d-ac34-92529148730f
Linearized	Yes
MIMEType	application/pdf

Exhibit 4



1 **D. GEORGE SWEIGERT, C/O**
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3 **MESA, AZ 85211**

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5
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7 **FOR THE SOUTHERN DISTRICT OF NEW YORK**
8 **(FOLEY SQUARE)**

9 **D. GEORGE SWEIGERT**

10 Plaintiff,

11 vs.

12 **JASON GOODMAN**

Defendant

Case No.: 1:18-cv-08653-UA

CERTIFICATE OF SERVICE

13
14 **CERTIFICATE OF SERVICE**

15
16 The Plaintiff certifies under penalties of perjury that the enclosed documents have been sent via First Class
17 postage paid U.S. Mail to:

18 **Jason Goodman**
19 **252 7th Avenue #6S**
20 **New York, NY 10001**

21 **PRO SE DIVISION -- 200**
22 **Clerk of the Court**
23 **U.S. District Court for the SDNY**
24 **(FOLEY SQUARE)**
25 **500 Pearl Street**
26 **New York, New York 10007-1312**

27 Respectfully dated this day 29 October, 2018,

28 

D. GEORGE SWEIGERT

CERTIFICATE OF SERVICE

CI

PRESS FIRMLY TO SEAL

PRIORITY[®]
★ MAIL ★

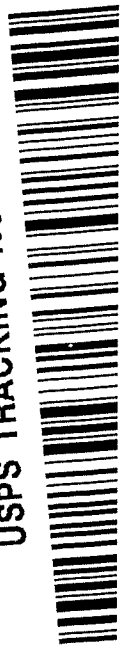
D. GEORGE SWEIGERT, C/O
P.O. BOX 152
MESA, AZ 85211

 **PICKUP AVAILABLE**

* Domestic only

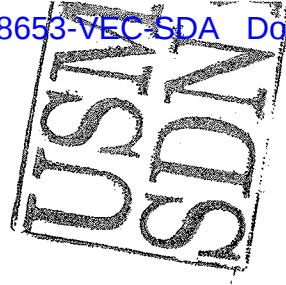
WHEN USED INTERNATIONALLY,
A CUSTOMS DECLARATION
LABEL MAY BE REQUIRED.

EXPECTED DELIVERY DAY: 11/01/2018
USPS TRACKING NUMBER



ate Envelope
ary 2014

FROM:



TO:

PRO SE DIVISION
Clerk of the Court
U.S. District Court for the SDNY
(FOLEY SQUARE)
500 Pearl Street
New York, New York 10007-1312

#200
PRO SE

VISIT US AT USPS.COM[®]
ORDER FREE SUPPLIES ONLINE



This envelope is made from post-consumer waste. Please recycle - again.